SEMANTAN ESTATE (1952) SDN BHD v. THE REGISTRAR OF TITLES (FEDERAL TERRITORY)

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD SHAHRIR MOHD SALLEH J
[ORIGINATING SUMMONS NO: WA-24NCVC-301-02-2017]
20 OCTOBER 2024

Abstract – *In respect of an application under s. 417 of the National Land Code for directing the Registrar of Titles to reinstate the name of an applicant in the Register of Titles as the rightful proprietor of a land, there is no requirement that there must first be a judgment or order of the courts which declared that the applicant has the title to the land or is the rightful proprietor of the land, before the said application can be allowed.*

LAND LAW: *Acquisition of land – Validity – Acquisition of land in 1950s held improperly executed by High Court – Judgment of High Court affirmed by Court of Appeal and Federal Court – Application by former landowner under s. 417 of National Land Code for Registrar of Titles ('Registrar') to give effect to judgment of High Court and to reinstate its name as rightful proprietor of land – Whether there was necessity for judgment of High Court to declare former landowner had title to land or rightful proprietor to land, and not only its beneficial owner, before court could direct Registrar to reinstate former landowner's name in Register of Titles*

The plaintiff was the proprietor of the 263.272 acres of land which was acquired by the defendant, the Registrar of Titles (Federal Territory), sometime in the 1950s ('land'). In 2009, the High Court held that the acquisition of the land by the defendant had been improperly executed ('2009 judgment'). The defendant's appeal was rejected by the Court of Appeal and the leave of appeal was not allowed by the Federal Court. The Federal Court also dismissed the defendant's application to review the 2009 judgment. In the present originating summons ('OS'), as the 2009 judgment remained a good judgment, the plaintiff applied for an order to direct the defendant to give effect to the 2009 judgment. By relying on s. 417 of the National Land Code ('NLC'), the plaintiff sought an order to direct the defendant to reinstate the plaintiff's name in the Register of Titles ('register') as the rightful proprietor of the land. In contesting the OS, the defendant contended that: (i) the 2009 judgment did not have the effect of transferring the land to the plaintiff; (ii) considering that the 2009 judgment only declared the plaintiff as the beneficial owner of the land, the issue of the plaintiff having the legal proprietorship over the land by virtue of the 2009 judgment did not arise; and (iii) for the plaintiff to be declared as the legal proprietor of the land, there must first be a judgment or order which stated that the plaintiff had the title to the land or was the rightful proprietor of the land.

Held (allowing application):

(1) The defendant's contention must be dismissed outright. The defendant had construed the position of the law too literally. In the context of the OS, the contention was too superficial. Firstly, if the terms of judgment or order in any land proceedings were clear, there would be no need to rely on s. 417 of the NLC. One would only need to refer to the terms of the judgment or order itself for purposes of enforcement. Secondly, if there were additional actions that the defendant must take to implement the judgment or order, s. 417(1) of the NLC may be applicable regardless of the specificity of the judgment or order. The said section is not limited to terms explicitly stated in the judgment or order. The same is sufficiently broad to include all judgments and orders provided that the order sought does not conflict with the terms of the judgment or order given in the land proceedings. (paras 19 & 20)

(2) It was made clear in *Malaysia Building Society Bhd v. KCSB Konsortium Sdn Bhd* that as a result of an order declaring an instrument of transfer as void, the powers under s. 417 of the NLC may be used to direct the defendant to remove any memorial made in the register and issue documents of titles due to the void transfer. That would result in registration of proprietorship of the land being reverted prior to the transfer which was held to be void. Therefore, there was no necessity for the 2009 judgment to state that the land must be transferred back to the plaintiff. If the court were to accede to the defendant's argument, that would mean that the defendant could continue to trespass unto the land. That would be averse to the 2009 judgment. As such, the OS was allowed with costs of RM50,000. And the defendant was given a period of three months to carry out the terms of the plaintiff's prayers into effect. (paras 26, 27 & 31)

Case(s) referred to:

Loh Kooi Choon v. Government Of Malaysia [1975] CLJU 90; [1975] 1 LNS 90 FC ***(refd)***
Malaysia Building Society Bhd v. KCSB Konsortium Sdn Bhd [2017] 4 CLJ 24 FC ***(refd)***
Othman & Anor v. Mek [1972] CLJU 103; [1972] 1 LNS 103 FC ***(refd)***
Sungei Biak Tin Mines Ltd v. Saw Choo Theng & Anor (No 2) [1970] CLJU 150; [1970] 1 LNS 150 FC ***(refd)***
Takako Sakao v. Ng Pek Yuen & Anor (No 2) [2010] 1 CLJ 419 FC ***(refd)***
Tan Soo Bing & Ors v. Tan Kooi Fook [1997] 1 CLJ 556 FC ***(refd)***

Legislation referred to:

National Land Code, s. 417(1)

For the plaintiff - Ira Biswas, Alexie Ng Ying Ching & Janet Chai Pei Ying; M/s Chooi & Company
For the defendant - Shamsul Bolhassan & Mohamad Al-Saifi Hashim; SFCs & Muhammad Hairuliqram Hairuddin; FC

Reported by Syamim Ariffin

A

JUDGMENT

Ahmad Shahrir Mohd Salleh J:

Introduction

B **[1]** In this originating summons, the plaintiff applied for an order to direct the defendant to give effect to the judgment in favour of the plaintiff handed down by the High Court in December 2009. In essence, the plaintiff sought for an order pursuant to s. 417 of the National Land Code for its name to be reinstated in the register of titles as the rightful proprietor of the lands in question.

C **[2]** At the onset, learned Senior Federal Counsel requested for a further three months' grace to enable the parties to reach settlement. Despite no objections from learned counsel for the plaintiff, I was not persuaded with the reasons advanced and proceeded to hear the aged originating summons.

D **[3]** After perusing the application and the affidavits filed for and against the application and considering the position of the respective parties as deliberated in the submissions of learned counsel for the plaintiff and learned Senior Federal Counsel appearing for the defendant, this court allowed the plaintiff's application with RM50,000 cost. The defendant was not satisfied with the decision and appealed.

E

Brief Background Facts

[4] A number of reported judgments for various suits have dealt with the facts and history of the case. I find no further need to repeat the same. Suffice for me to confine matters to the judgment of Her Ladyship the Honourable F Judicial Commissioner Puan Zura binti Yahya dated 29 December 2009 in High Court Suit No S7-21-213-2003 ("2009 judgment").

[5] The operative parts of the 2009 judgment read as follows:

> (a) The plaintiff retained its beneficial interest in the 263.272 acres of the G land held under CT 17038 Mukim of Batu (formerly part of the land known as Lot 4647 comprised in CT 12530) of which the defendant has through its servants and/or agents taken unlawful possession of and that the plaintiff is entitled as against the defendant to possession thereof;
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> (b) That the defendant do pay the plaintiff mesne profits as damages for trespass, the said damages to be assessed by the Senior Assistant H Registrar;
>
> (c) That the defendant do pay the plaintiff costs in respect of liability forthwith.

[6] The defendant appealed against the 2009 judgment but in May 2012, I the Court of Appeal dismissed the appeal and affirmed the decision of the High Court. The defendant's leave to appeal to the Federal Court was

dismissed in November 2012. Six years later, the defendant's application for a review was also dismissed by the Federal Court. In short, the 2009 judgment stood as good judgment.

[7] In the present application, the plaintiff sought for the following reliefs:

(i) that an order be granted to direct the defendant to do all such things as may be necessary to give effect to that part of the 2009 judgment that orders as follows:

> The plaintiff retained its beneficial interest in the 263.272 acres of land held under CT 17038 Mukim of Batu (formerly part of the land known as Lot 4647 comprised in CT 12530) of which the defendant has through its servants and/or agents taken unlawful possession of and that the plaintiff is entitled as against the defendant to possession thereof;

(ii) that an order(s) be granted to direct the defendant to:

(a) transfer and cause to be transferred the 263.272 acres of land, which was held under CT 17038 Mukim of Batu and the subject of the judgment to the plaintiff, free of encumbrances and liabilities, including but not limited to registering the plaintiff as the proprietor of the land;

(b) take and cause all necessary steps to be taken to register the plaintiff as the proprietor of the land, free of encumbrances and liabilities;

(c) execute and cause to be executed all instruments of transfer necessary to effect a transfer of the land free of encumbrances and liabilities to the plaintiff;

(d) issue and cause to be issued the issue document of title to the land free of encumbrances and liabilities in the name of the plaintiff;

(e) prepare, change, cancel, delete, correct and/or amend the relevant register document(s) of title, issuing document(s) of title or any other register or instrument relating to the land, including any memorial or entry in the relevant register of titles and documents so as to vest the registered proprietorship in the land free of encumbrances and liabilities in the name of the plaintiff; and

(f) return, cause to be returned and make all necessary directions, arrangements, preparations and/or take all necessary action in respect of returning and handing over possession of the land to the plaintiff as the lawful proprietor and owner of the land;

(iii) that the cost of this application be borne and paid by the defendant; and

(iv) other reliefs.

A **Analysis And Findings**

[8] It is essential to recognise the incontrovertible fact established by the 2009 judgment, which found that the acquisition was improperly executed. That has resulted in the conclusion that there was no lawful acquisition by the Government of the 263.272 acres of land.

B

[9] Section 417 of the National Land Code confers upon the courts extensive powers to make any requisite orders to facilitate the execution of judgments or orders given in any proceedings relating to land matters. This is manifest from a reading of sub-s. (1) of the Code.

C Section 417 of the National Land Code provides as follows:

> General authority of the Court
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> 417. (1) The Court or a Judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating
> D to land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith.
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> (2) Where, pursuant to any order made by virtue of this section, the Registrar or any Land Administrator:
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> E (a) cancels any instrument relating to land, or any memorial or other entry on any such instrument, or
>
> (b) makes any other amendment of, or addition to, any such instrument,
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> he shall note thereon the reason for the cancellation, amendment or
> F addition, and the date thereof, and shall authenticate the same by his signature and seal.
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> (3) Where the Registrar or Land Administrator takes action under this section in respect of any land or any share or interest therein, he shall cause notice of his action to be served upon any person or body having a claim protected by caveat affecting the land, share or interest.
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> G

[10] A consistent approach has been adopted by the highest court in the country in respect of the expansive powers granted by Parliament to the courts under s. 417 of the National Land Code. These authorities have been cited by both learned counsel for the plaintiff and learned Senior Federal
H Counsel and it is imperative that I reiterate the same as they are pertinent to the applicable law on the subject.

[11] A clear illustration of the principles may be provided by referring to the case of *Sungei Biak Tin Mines Ltd v. Saw Choo Theng & Anor (No 2)* [1970] CLJU 150; [1970] 1 LNS 150; [1970] 2 MLJ 226. In *Sungei Biak Tin Mines*
I *Ltd* (*supra*), the Federal Court had invoked its powers under s. 417 of the National Land Code to effectuate its ruling, confirming that the appellant had

not breached the sublease agreement. This was despite there being no judgment for the cancellation of the appellant's sublease to be deleted or for it to be restored in favour of the appellant.

[12] The facts of *Sungei Biak Tin Mines Ltd* (*supra*) were as follows. The respondents held a mining lease from the Perak State Government and subsequently granted a sublease to the appellant. The respondents alleged that the appellant breached the sublease agreement by unlawfully cutting down rubber trees and replacing them with tapioca without the respondents' consent. As a result, the respondents initiated legal action against the appellant for breach of the sublease and sought for the sublease to be cancelled. The High Court ruled in favour of the respondents.

[13] On appeal, the Federal Court found that the appellant had not breached the sublease agreement. Subsequently, the appellant's counsel sought an order to restore the sublease in the register of land titles. The court instead directed the appellant to submit a formal application, which the appellant proceeded to do. However, by the time the application was filed, the respondents had already granted a new sublease for the same parcel of land to a third party.

[14] In granting the appellant's application to restore the initial sublease in the register of land titles, the Federal Court reasoned that the appellant had not breached the sublease agreement with the respondents and therefore the cancellation of the sublease was unjustified. As the sublease remained intact, the appellant retained status as the sublessee, which conferred upon it the authority to dispose of any interest in the subleased land rather than the respondents. The Federal Court invoked s. 417 of the National Land Code to implement its ruling affirming that the defendant did not breach the sublease agreement.

[15] In delivering the judgment of the Federal Court, His Lordship, the Honourable Suffian FJ remarked as follows:

> Section 417 of the National Land Code clearly says that the Court has power to direct the collector to do all such things as may be necessary to give effect to its judgment or order. *If we did not order the collector to remove Mr Lee's name from the register and put back on it that of the defendant company, we would be allowing the plaintiffs and Mr Lee to thumb their noses at a judgment of the Federal Court, and I do not think that we should allow that*. We should give effect to our judgment and order the collector to get Mr Lee off the register and put the defendant company back on it.
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> (emphasis added)

[16] The apex court has consistently acknowledged the broad powers conferred by s. 417 of the National Land Code to issue consequential orders that give effect to the judgments and orders of the courts. A firm commitment to preserving this power has been evident, ensuring that even subsequent intervening events do not undermine the judgment or order. This can be seen

in the decisions of the Federal Court in *Othman & Anor v. Mek* [1972] CLJU 103; [1972] 1 LNS 103; [1972] 1 MLRA 76; [1972] 2 MLJ 158; *Takako Sakao v. Ng Pek Yuen & Anor (No 2)* [2010] 1 CLJ 419; [2009] 3 MLRA 92; [2010] 2 MLJ 181 and *Malaysia Building Society Bhd v. KCSB Konsortium Sdn Bhd* [2017] 4 CLJ 24; [2017] 5 MLRA 187; [2017] 2 MLJ 557.

[17] In submissions, learned Senior Federal Counsel correctly referred to the decision of the Federal Court in *Tan Soo Bing & Ors v. Tan Kooi Fook* [1997] 1 CLJ 556; [1996] 3 MLJ 547 for the same proposition of the law in support of the interpretation of s. 417 of the Code. Learned Senior Federal Counsel argued that as decided by the Federal Court in *Tan Soo Bing & Ors* (*supra*), "there must first be a final judgment or order of the court.". In other words, according to learned Senior Federal Counsel, there must first be a judgment granting the plaintiff proprietorship of the lands in question before this court can invoke the provisions of s. 417(1) of the National Land Code.

[18] Learned Senior Federal Counsel posited that the judgment cannot have the effect of having the lands transferred to the plaintiff. Learned Senior Federal Counsel argued that since the judgment merely declared beneficial ownership of the lands remained with the plaintiff, the issue of the plaintiff having legal proprietorship by virtue of that finding did not arise. There must first be a judgment or order which states that the plaintiff has title to the land or that it is the rightful proprietor of the land.

[19] With respect, I must say that this contention must be dismissed outright. I hold the considered view that learned Senior Federal Counsel had construed the position of the law somewhat too literally. In the context of this originating summons, I find this contention to be too superficial. Did learned Senior Federal Counsel really expect this court to accept the argument that the reliefs sought by the plaintiff under s. 417 of the National Land Code can only be granted by this court if the 2009 judgment states in exact terms that the lands belonged to the plaintiff or something to the same effect?

[20] First of all, if the terms of the judgment or order in any land proceedings are clear, there would be no need to rely on s. 417(1) of the Code. One only needs to refer to the terms of the judgment or order itself for purposes of enforcement. Secondly, if there are additional actions that the Registrar or the Land Administrator must take to implement the judgment or order, s. 417(1) of the Code may be applicable regardless of the specificity of the judgment or order. Section 417(1) of the Code is not limited to terms explicitly stated in the judgment or order. It is sufficiently broad to include all judgments and orders provided that the order sought for does not conflict with the terms of the judgment or order given in the land proceedings.

[21] Of utmost pertinence was the incontrovertible fact that the Government was and still is in unlawful occupation of the lands due to the botched acquisition. This fact was found as such by the High Court, affirmed by the Court of Appeal and subsequently the Federal Court. Even an attempt to review the decision of the Federal Court fell flat to the ground. On the premise of this fact and circumstance, can it be validly or sensibly argued that while the Government is in unlawful occupation of the land, it can still remain in possession and title should not be transferred back to the plaintiff? I find such a proposition is untenable to say the least if not utterly ludicrous.

[22] Prior to the acquisition, the lands belonged to the plaintiff. Had the acquisition been valid and lawful, the lands would belong to the Government. However, when the acquisition was held to be invalid and the occupation of the lands by the Government became unlawful, why should the lands not revert back to the plaintiff?

[23] As a matter of an analogical approach, consider this. If one were to extend the matter just a teeny step further in this manner; since the acquisition of the lands was held to be invalid, the Government was found liable to pay damages for trespass and it was held that beneficial interest remained that of the plaintiff, could it still be argued that the title to the lands may still remain in the name of the Federal Lands Commissioner? I can only answer this question with a simple no, anything more would be too cryptic.

[24] In my considered view, the underlying object of s. 417 of the Code is the giving effect to any judgment or order of the court. If the orders sought would give effect to the judgment or order, it must then be the kind of reliefs that are contemplated by s. 417 of the Code and this was exactly what was prayed for by the plaintiff.

[25] In *Malaysia Building Society Bhd* (*supra*), the same argument was posed by learned counsel for the respondent. In explaining the correct position of the law, His Lordship the Right Honourable Arifin Zakaria CJ explicates as follows:

> [31] The case of *Tan Soo Bing & Ors v. Tan Kooi Fook* [1996] 2 MLRA 164; [1996] 3 MLJ 547; [1997] 1 CLJ 556 was also cited in support of the same proposition. The respondent relied on what was said by Wan Adnan FCJ (as he then was) at p. 562 (CLJ); p. 554 (MLJ) which reads:
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> > In our view, the words … be necessary to give effect to any judgment or order given or made in any proceedings' in s. 417(1) are very important. These words limit the power of the court to give directions to the registrar. The court can only give directions to the registrar if such directions are necessary to give effect to any judgment or order of the court. There must first be a final judgment or order of the court. Then only, in order to give effect to such judgment or order, the court can give directions to the registrar.

A The words bolded were construed to mean that there must first exist a final judgment or order of the court then only the court can give direction under s. 417 to give effect to the judgment or order.

However, at p. 562 (CLJ); p. 555 (MLJ), the learned judge elaborated further in the following words:

B *Thus, where for example the court in a proceeding relating to a particular piece of land makes an order that an instrument of transfer in respect of such land is void, the court may direct the registrar to remove any memorial made pursuant to such void instrument of transfer from the register and issue document of title in respect of the said land. Such direction is necessary to give effect to the order that the court has made.*

C In our view, what the learned judge said was that any court making an order on any matter which relates to land may, consequent upon the order, give such direction to the Registrar as may be necessary to give effect to such order. There is nothing in the judgment to say that a party has to firstly obtain the order of court in one proceeding and subsequently D apply in another proceeding for a direction under s. 417 of the NLC. Therefore, we do not find anything in the judgment which goes to support the two-stage approach/process, as submitted by learned counsel for the respondent.

(emphasis added)

E **[26]** The Federal Court in *Malaysia Building Society Bhd* (*supra*) made it clear that as a result of an order declaring an instrument of transfer as void, the powers under s. 417 of the National Land Code may be used to direct the Registrar to remove any memorial made in the register and issue documents of title due to the void transfer. That would result in registration F of proprietorship of the land being reverted prior to the transfer, which was held to be void. There was no necessity for the order to state that the land must be transferred back, as argued by learned Senior Federal Counsel. Regrettably, the elaboration of the principles further in the judgment in *Tan Soo Bing & Ors* (*supra*) was not equally acknowledged by learned Senior Federal Counsel.

G **[27]** If this court were to accede to the arguments posited by learned Senior Federal Counsel, that would mean that the defendant could continue to trespass unto the land. Respectfully, that would, to my mind, be averse to the 2009 judgment.

H **[28]** This court is not at all oblivious of the impact of its decision. In fact, ever since the decision delivered by Her Ladyship the Honourable Zura Yahya JC some 15 years ago, this court has been most cognisant of the ensuing repercussions. Nevertheless, in performing its judicial function to uphold the sanctity of the Constitution, it is imperative for this court to I uphold and accord the fundamental rights entrenched in the Federal

Constitution its rightful status without sanctimony. It is indeed a daunting function which must be performed in upholding judicial impartiality as a matter of fairness for all, not a select few. Indeed, that is one of the hallmarks of an independent Judiciary.

[29] When called upon to uphold fundamental rights as enshrined under the Constitution, the courts do not engage in riddles and whitewashes in protecting against transgressions over those rights. So sacrosanct are these fundamental rights that not even the powers of the State could encroach upon. In *Loh Kooi Choon v. Government Of Malaysia* [1975] CLJU 90; [1975] 1 LNS 90, His Royal Highness, the late Raja Azlan Shah FJ (later LP) prompted the guidance in the following words:

> The Constitution is not a mere collection of pious platitudes. It is the supreme law of the land embodying three basic concepts: One of them is that the individual has certain fundamental rights upon which not even the power of the State may encroach. The second is the distribution of sovereign power between the States and the Federation, that the 13 States shall exercise sovereign power in local matters and the nation in matters affecting the country at large. The third is that no single man or body shall exercise complete sovereign power, but that it shall be distributed among the Executive, Legislative and Judicial branches of government, compendiously expressed in modern terms that we are a government of laws, not of men.

Conclusion

[30] The reliefs prayed for by the plaintiff under prayers 2, 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 of the originating summons did not specify the period within which they were to take effect. When this question was posed to learned counsel for the plaintiff, she asked for a forthwith order, whereas learned Senior Federal Counsel left it at the discretion of the court. I considered that the defendant had earlier asked for a grace of three months for settlement and I reckoned the defendant should be allowed the same length of time to comply with the order. After all, if indeed that was the time required for settlement, parties would have been able to ink one by that time.

[31] On the basis of these reasons, I allowed the plaintiff's originating summons for prayers 1, 2, 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6. In respect of prayers 2, 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6, the defendant was allowed the period of three months from the date of this order to carry out the terms of the prayers into effect. Cost of RM50,000 is allowed.